

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
September 25, 2008

Legend

X =

A =

D1 =

State =

Dear :

This letter responds to a letter dated July 10, 2008, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

X was incorporated under State law on D1. X's shareholder, A intended for X to be an S corporation effective D1. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

X requests a ruling that it will be recognized as an S corporation effective D1.

Law and Analysis

Section 1362(a)(1) provides that, except as provided in §1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then the election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to make the election, then the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Conclusion

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective D1, within 60 days following the date of this letter, the election shall be treated as timely made.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

/s/

Leslie H. Finlow
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: